IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 5630 of 2006
Date of Decision: 27.10.2006

Rajiv Kumar & Anr. ...Petitioners

Vs.

Kanta Devi ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Ashish Grover, Advocate,
for the petitioners.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against the orders passed by the learned courts below allowing the application moved by the plaintiff-respondent under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

The case of the plaintiff was that in pursuance to the agreement of sale she was put in possession of the property by Maya Devi who was owner of the property in dispute. Subsequently, a sale deed has also been executed in her favour and in pursuance to the sale deed she has constructed a room and boundary wall on the plot purchased by her. The case set up by the plaintiff was that the defendants made an attempt to dispossess her and tried to demolish the boundary wall in which they could

not succeed hence the suit was brought.

The stand taken by the petitioner-defendants was that the sale deed in favour of the plaintiff-respondent was a forged document as Maya Devi has been left with no property in pursuance to the sale earlier made by her. However, the learned courts below on the basis of the revenue documents produced on record came to the conclusion that Maya Devi was owner of 17 Marlas 8 Sarsai and therefore, there was land available with her which has been sold to the plaintiff. Thus, the learned courts below prima facie had come to the conclusion that the respondent-plaintiff was in possession of the property and was put in possession thereof in pursuance to the agreement of sale and therefore, she has right to protect her possession under Section 53-A of the Transfer of Property Act even against a true owner.

Learned counsel for the petitioners vehemently contends that the learned courts below have non-suited the petitioners merely by holding that the boundaries of the plot were different and therefore, it could not be said that the same plot has been sold. The contention of the learned counsel for the petitioners is that this finding recorded by the courts below is the outcome of misreading of the sale deed and the documents placed on record. As a matter of fact, the petitioners have sold the property to Ujagar Singh who was put in possession thereof and in fact the defendants were in possession of the property in dispute.

I have considered the arguments raised by the learned counsel for the petitioners and find no force in the same. For the purpose of decision of an application under Order 39 Rules 1 and 2 of the Code the court has to form a prima facie opinion with regard to the possession. On

the basis of the sale deed and revenue record produced it was prima facie proved on record that the plaintiff-respondent was in possession of the plot in dispute and has constructed boundary wall and therefore, the learned courts below were right in restraining the defendants from interfering in possession of the plaintiff-respondent in any manner or demolishing the wall. Therefore, there is no error of jurisdiction which may call for interference by this court in revisional jurisdiction under Article 227 of the Constitution of India.

Dismissed.

(Vinod K.Sharma)
Judge

27.10.2006
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